

APPEAL NO. 010379

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On September 19, 2000, a hearing was held. In Texas Workers' Compensation Commission Appeal No. 002563, decided December 13, 2000, the hearing officer's decision was reversed and remanded for reconstruction of the hearing record. In the decision on remand, the hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on _____, and that the claimant has not had disability. The claimant appealed the hearing officer's decision on remand and the respondent (self-insured) responded.

DECISION

The hearing officer's decision on remand has become final under Section 410.169 because the claimant's request for appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for appeal shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002659, decided December 12, 2000. Rule 102.5(d) provides in part that, for purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed.

Records of the Commission reflect that the hearing officer's decision on remand was mailed to the claimant on January 26, 2001, with a cover letter of the same date. The fifth day after January 26, 2001, was Wednesday, January 31, 2001, which was the deemed date of receipt under Rule 102.5(d). The hearing officer's decision on remand was mailed to the claimant at the same address as is shown to be the return address on the envelope in which she mailed her appeal. The claimant states in her appeal that she received the hearing officer's decision on remand on February 2, 2001. In Texas Workers' Compensation Commission Appeal No. 982315, decided November 6, 1998, the Appeals Panel noted that when Commission records show distribution to the claimant on a particular day at the correct address, the mere assertion that the decision was received

after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule.

The 15th day after January 31, 2001, was Thursday, February 15, 2001, and the 20th day after January 31, 2001, was Tuesday, February 20, 2001. The envelope in which the claimant's appeal was mailed is postmarked February 16, 2001, and the appeal was received by the Commission on February 21, 2001. Since the claimant's appeal of the hearing officer's decision on remand was mailed after February 15, 2001, and was received by the Commission after February 20, 2001, it was not timely filed. Section 410.169 provides that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

The hearing officer's decision and order on remand has become final under Section 410.169.

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge